IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE FOURTH DAY OF JANUARY
TWO THOUSAND AND SEVEN

PRESENT
THE HON'BLE SRI JUSTICE J.CHELAMESWAR
and
THE HON'BLE SRI JUSTICE D. APPA RAO

W.P.No. 304 of 2007

Between:-

M/s. Ganesh Travels, Hyderabad

..Petitioner

And

1. The Commercial Tax Officer,
   Ashok Nagar Circle,
   Hyderabad and two others.

..Respondents

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ORDER (Per JC,J) :

This writ petition is filed with a prayer as follows:

> "To declare the action of the 1st respondent in passing the impugned assessment order dated 17-10-2006 in Form VAT 305 treating the amount received by the petitioner towards transport charges as the charges towards transfer of right to use goods under Sub-Section (8) of Section 4 of AP VAT Act, 2005 as illegal, arbitrary, high handed, without authority of law or jurisdiction and set aside the same and declare that the amount received by the petitioner from the 3rd respondent towards transport charges for transporting the employees of the 3rd respondent from one place to another in pursuance of the agreement is not eligible to tax under the provisions of AP VAT Act, 2005 as the petitioner/registered owners have the custody and control of the vehicles even during the agreement period and is discharging the liability under the Service Tax Act declare that the impugned levy of tax is without authority of law and jurisdiction since there is no effective transfer of right to use goods by the petitioner in favour of the 3rd respondent."

2. The petitioner is a proprietory concern carrying on business in providing passenger transport service on hire basis to various persons including the 3rd respondent herein. The petitioner in the course of its business, entered into an agreement with the 3rd respondent for transporting its employees from the residence of the respective employees to the office premises of the 3rd respondent and also from the notified pick-up points to the 3rd respondent company. For the purpose of rendering the above-mentioned service, it appears, the petitioner in turn engages the vehicles through out-sourcing from its registered owners and uses

the same for transporting the employees of the 3rd respondent in terms of the agreement on commission basis.

3. The 1st respondent assessed the petitioner's tax under the A.P. VAT Act on the above mentioned activity of the petitioner by his order dated 17-10-2006. The said assessment order was preceded by notice in Form 305A, dated
27-03-2006. The petitioner assails that he filed his objections on 06-04-2006 and also requested for some more time for filing a detailed reply to the proposal. The further details may not be necessary for the present purpose.

4. Eventually, the assessment order referred to above came to be passed. A copy of the order is filed along with writ petition which is a printed proforma, without any reasons.

5. The specific case of the petitioner is that having regard to the terms of the agreement between the petitioner and the 3rd respondent, the contract is only one for service of transport but no transfer of property in the vehicle is involved in the said transaction. This objection of the petitioner apparently is not considered as the assessment order does not reflect any such consideration.

6. Heard the learned Government Pleader for Commercial Tax.

7. In the circumstances, we deem it appropriate to set aside the impugned order on the ground that the order is one passed without considering the objections of the petitioner and without assigning any reason.

8. However, we leave it open to the petitioner to submit his objections along with necessary supporting material in support of his objections. On receipt of such objections, it is open to the 1st respondent to pass a fresh assessment order, if he is so advised

in accordance with law. The petitioner undertakes to file his objections and the supporting material, if any, within a period of two weeks from today without any further notice from the 1st respondent.

9. The Writ Petition is accordingly disposed of. No costs.

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J.CHELAMESWAR, J

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January 04, 2007 **D.APPA RAO, J**

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